

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ABINGDON DIVISION**

<b>UNITED STATES OF AMERICA</b>	)	
	)	
	)	Case No. 1:10CR00002
	)	
v.	)	<b>OPINION AND ORDER</b>
	)	
<b>APRIL SHANNON HUTSON, ET AL.,</b>	)	By: James P. Jones
	)	Chief United States District Judge
Defendants.	)	

*Zachary T. Lee, Assistant United States Attorney, Abingdon, Virginia, for United States; Brian J. Beck, Assistant Federal Public Defender, Abingdon, Virginia, for Defendant April Shannon Hutson; Dennis E. Jones, Lebanon, Virginia, for Defendant Johnathan Trenton Leonard; and David D. Walker, Salem, Virginia, for Defendant Chuck Allen Hensley.*

In this multi-defendant drug trafficking conspiracy trial, two of the defendants, Johnathan Trenton Leonard and Chuck Allen Hensley, seek to call a codefendant, April Shannon Hutson, a leader of the conspiracy, to testify. Hutson objects, claiming her Fifth Amendment protection against self-incrimination.<sup>1</sup>

Hutson has pleaded guilty and is awaiting sentencing, but she retains her privilege against self-incrimination. *See Mitchell v. United States*, 526 U.S. 314, 326

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<sup>1</sup> Prior to trial, Hutson filed a motion to quash Leonard's petition seeking a writ of habeas corpus ad testificandum for Hutson. The magistrate judge denied the motion, correctly ruling that the witness should be produced, and if she asserted her Fifth Amendment privilege outside of the presence of the jury, the court might then rule on that assertion. Hensley has also recently filed a petition seeking Hutson's presence at trial to testify, which petition has not been ruled on. In view of my ruling here, I will deny Hensley's petition.

(1999). The defendants do not dispute that Hutson's testimony would be incriminating. Nevertheless, Leonard and Hensley contend that Hutson has waived her privilege by testifying before the grand jury in the prosecution of a different defendant. The defendants represent that they wish to question Hutson about the same subject matter as her grand jury testimony.

"It is settled that a waiver of the Fifth Amendment privilege is limited to the particular proceeding in which the waiver occurs [and] [c]onsequently, voluntary testimony before a grand jury does not waive the privilege against self-incrimination at trial." *United States v. Licavoli*, 604 F.2d 613, 623 (9th Cir. 1979) (citations omitted); see Graham C. Lilly, *Introduction to the Law of Evidence* 500 (3d ed. 1996) (noting that the clear majority view is that waiver of the privilege in a pretrial proceeding does not preclude the witness from reasserting the privilege at a later trial).

For these reasons, I find that the witness's assertion of the privilege is justified and I will excuse the witness from testifying. The petition for a writ of habeas corpus ad testificandum by defendant Hensley (DE 929) is DENIED.

It is so **ORDERED**.

ENTER: May 16, 2010

/s/ JAMES P. JONES  
Chief United States District Judge